

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5492**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 p.m., March 11, 2008 in Sacramento, with Chair Rick Rice presiding.

**2. Roll Call: Members**

**Present**

**Absent**

Rick Rice, Chair	x	
Fred Aguiar, Vice Chair	x	
Ann Richardson	x	
Terri Carbaugh	x	
Liz Figueroa	x	
Cindy Montañez	x	
Stephen Egan	x	

**3. Approval of the Minutes:**

The February 11, 2008 minutes were approved by all members.

**4. Chair's Report:**

Chair Rice reported that he attended a Governor's Office meeting for all agency Secretaries and Directors regarding the FY2008/09 budget. Chair Rice stated that everyone will need to watch their expenditures very carefully.

Chair Rice reported that he will be testifying before the Joint Legislative Audit Committee at 9:30 a.m. on March 12, 2008, with regard to the Agency's request for an audit.

Chair Rice stated he attended the PALJ meeting last week. It is apparent that the PALJs are working diligently and all of the offices are very busy. He also visited the Inland Office of Appeals, and attended security training presented by the Information Security Officer and Jehan Flagg while there.

Chair Rice further reported that the CUIAB will be conducting ALJ II exams in the near future, and invited any interested Board Member to participate.

**5. Board Member Reports:**

There were no Board Member reports.

**6. Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the PALJ meeting focused on budget and operational issues. The Chair and Members Richardson and Egan were able to attend portions of the meeting. There are some issues with facilities, because with the workload increase there is a shortage of hearing rooms. A number of sites are under construction and some office space will be converted into hearing rooms for phone hearings. There was also a well-received presentation by the Attorney General's office on progressive discipline. The PALJs responsibilities have increased, as they are now required to hear one calendar a week. In addition, the increased number of hearings in each office overall results in a higher administrative workload for the PALJs, who must deal with things like subpoena calls, requests for interpreters, and continuance requests. However, the PALJs and their staff are determined to get on top of the workload issues.

Executive Director Arcellana reported that four new ALJs have been hired and are now in their second week of training. To further alleviate the workload, a policy decision was made during the PALJ meeting to offer our retired annuitant judges permanent-intermittent positions, thereby overcoming the hours limitation applicable to retirees.

Executive Director Arcellana reported that the Department of Labor has selected Hugh Harrison to participate in the national quality review process. Every year the national office samples cases from each state, utilizing about a half dozen staff from various states. They go to Washington DC for two weeks to listen to hearings and grade them. He stated that one of the dangers with the rapid increase in the workload is that quality may drop, and the CUIAB wants to make certain that this does not happen in California.

Executive Director Arcellana followed up on EDD's request that CUIAB handle all state-employee DI claims out of the Sacramento office, by advising that the field averages just seven of such cases per month, and Appellate Operations averages just one a month. Holding the hearings by telephone will not be a problem because the nature of these cases is usually technical.

Executive Director Arcellana also followed up on the Chair's suggestion to expand the number of hours for scheduling cases. Right now cases are scheduled from 8:00 a.m. to 4:30 p.m. After meeting with the PALJs the only concerns regarding the off-hour schedules were a lack of support staff for the ALJs, and some security issues. Currently one office is scheduling some cases during evenings and weekends. Executive Director Arcellana suggested that telephone hearings could be scheduled during the off hours to eliminate the need for staff and to avoid security issues. Executive Director Arcellana stated that another suggestion was to establish a calendaring practice similar to Superior Court, whereby a block of cases is set every two hours. If a case is called during the first hour and the party does not appear it can be trailed with the second set. He stated there were some problems with that, because in many cases the claimants do not have the time to stay and that the employer would be opposed to pulling their witnesses out for two

to fours at a time. He stated they will pilot a system where single party cases will be double set during this period of high workload.

Member Montañez expressed her thanks to the staff for their willingness and hard work to implement these changes.

## **7. Branch Reports:**

a. Executive Director/Chief Administrative Law Judge Jay Arcellana reported that dispositions for February were greater than verifications, which is very positive and indicates the reduction of inventory. This is the first time in seven months that dispositions have exceeded verifications, and also the first month of the Reduction Plan. In January the open balance of cases was 42,602, and in February the overall balance dropped to 40,635. The Field is getting a handle on the workload problem. (See Attachment A)

Executive Director Arcellana noted that the registrations for the month of February were 4% below the fiscal year average, but it is too early to tell if this is a trend. In checking the numbers for the first week in March, there is a significant increase in registrations. Dispositions for February were 8% above the fiscal average, and the highest level since October 2007. The Field disposed of 22,903 cases. That number should improve as the new ALJs complete the training, and their mentors get back to full production.

Executive Director Arcellana reported that case age dropped one day to 43 days. The 30-day time lapse was 3%, 45-day time lapse 11% and 90-day was 77% which indicates there is a way to go in terms of time lapse. However, as the older cases are completed the time lapse numbers should increase disproportionately. The other positive thing to report was that in the DI program dispositions exceeded verifications. The Rulings inventory increased by 38% or 314 cases, which is above the fiscal year average. Dispositions in Rulings exceeded verifications as well, and the Rulings balance is the lowest since June. The tax work also increased somewhat.

Executive Director Arcellana reported that the high workload offices continue to be San Diego, Inland and Sacramento, and the low workload offices are Pasadena, San Francisco and Orange County. Large portions of the work from the high workload offices will be transferred to the low workload offices to balance it off without having to shift staff resources.

Executive Director Arcellana stated that the first month of the Workload Reduction Plan was positive. He commended the field offices and the PALJs for working very hard on the process.

Member Carbaugh asked that in terms of the Agency's relationship with the Feds if there was a line of communication in which the CUIAB reports monthly and how those issues are being resolved.

Executive Director Arcellana responded that the Agency reports monthly through EDD, which in turn reports the Agency's numbers to the DOL. It is set up that way because the Federal government only recognizes one state department per state, and CUIAB is considered part of EDD. At the Chair's suggestion the Agency has been meeting with the EDD staff to smooth out some of the wrinkles with the reports. Staff from CUIAB is being trained on how to input the numbers into EDD's computers to prevent the problems with transmission of data from CUIAB to EDD. CUIAB is working with EDD to correct the issues with respect to reports, after which Agency, the Chair and Jehan Flagg, will meet with the Department of Labor to discuss with them.

Chair Rice stated that the first order of business is to make sure the information the Agency provides to EDD is accurate.

b. Jehan Flagg, Special Assistant, Communications and Internal Affairs reported that after the Attorney General's Office presentation at the PALJ quarterly meeting CUIAB staff gave a presentation on how to conduct employee evaluations. CUIAB has reinstituted the evaluations, which it believes to be an important personnel tool. The Attorney General's Office will return in April to conduct a similar overview for the LSS Is. CUIAB staff will again conduct an overview of the employee evaluations. The Attorney General's Office has also offered to conduct four-hour workshops and travel to other offices if needed.

Special Assistant Flagg reported that the Information Security Officer and the head of IT have been working together to address some of the confidential information concerns and other internal issues. At some point the ISO would like to encrypt computers for the work-at-home staff.

Special Assistant Flagg provided the Board with a summary of the hiring practices of some other state boards and commissions for their Executive Officers, to consider when taking up the issue of Policy 19 later on the agenda.

c. Acting Deputy Chief ALJ, Appellate Operations Julie Krebs reported that for February AO closed more cases than it registered. AO registered 1,080 new cases and closed 1,190 cases, leaving a balance of 1,783 cases. Registrations and closures were down for the fiscal year average, but this is common for the short month of February. Comparing February 2008 with February 2007, registrations increased by 8% and dispositions increased by 11%, indicating a higher workload. AO is working to reduce inventory.

Acting Deputy Chief ALJ Krebs reported that AO case aging for February was at 45 days; the standard is 40 days. The median is 36, indicating that there are some

older cases. Once the older cases are closed the case aging number will work itself out.

Acting Deputy Chief ALJ Krebs also reported that AO has two new bi-lingual hires, and another employee has returned from medical leave. This should help the registration workload.

Acting Deputy Chief ALJ Krebs reported that due to an oversight the ALJs at the Board did not have the case increase in January, but did start the increase in February. Lastly, some Board ALJs have volunteered to work in the field beginning March 7, and expressed her appreciation to those judges.

d. Deputy Director, Administrative Services Branch, Pam Boston reported that the Personnel Office has been extremely busy with recruitment activities. Personnel posted approximately 25 position actions during February. ALJ exams are currently being conducted, and the final filing date was March 6. There are approximately 25 candidates. Deputy Director Boston invited interested Board Members to participate in the interviews.

Deputy Director Boston also reported that the tenant improvements at the Venture Oaks building were started on March 1, and should be completed in June or July. The improvements include new paint, new carpet, some remodeling and various office modifications. In addition, there have been some security upgrades.

Deputy Director Boston reported that the ability to search precedent decisions on the web has been completed. The precedent decision can now be searched by various different methods, including word search, occupational titles and query search. Member Richardson asked if an all-employees notification was sent regarding the security upgrades, to which Deputy Director Boston replied not to date, but that it will be done.

Chair Rice encouraged that Board to participate in the ALJ interviews, and noted that the dates and schedules are currently being worked out, with some being held in Southern CA and some in Northern CA.

e. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on the following P&PM Branch items:

The Budget Advisory Committee met on February 27 & 28. The second quarter expenditure and usage reports were reviewed in addition to the Operating Expenses and Equipment listing of unforeseen/emergency requests and purchases. The Governor's Executive Orders S-01-08 was also reviewed. For the next meeting the BAC will bring their list of reserve items and expense code adjustment requests. The next BAC meeting is scheduled for late April, early May.

PPM Branch staff has provided assistance to Appellate Operations during their hiring process, and to PALJ Randy Petersen in the new judges training.

The Information Security Officer has been providing training in each office on the handling of confidential documents and the Management Directive that was released on November 14, 2007. The Information Security Division will now be featuring quarterly topics in CUIAB's News & Views regarding information security awareness.

A newly revised Incident Reporting form has been sent to the supervisors for their review. Supervisors will have the opportunity to provide feedback and hopefully we will be transitioning over to this new form soon. This new form will be posted on the Bench and should streamline the process of completing these forms.

**8. Chief Counsel's Report:**

Chief Counsel Hilton reported that the Board's workload averaged 13½ cases/day for each Board Member in February, and he expects that number to go up with the general workload increase.

Chief Counsel Hilton also reported that six new litigation cases were filed, one of which was an employment action. Five cases were closed and in all five cases the Board's decision was affirmed by the Court.

**9. Unfinished & New Business:**

Item No. 1: Delegation of authority to conduct hearings

Member Carbaugh prefaced this item by stating that she felt Member Richardson was highly qualified, extremely talented and very knowledgeable in the area of unemployment law, and would be a great asset to the field.

Chair Rice took the vote for delegation of authority to conduct hearings to Board Members, in this case Member Richardson, in accordance with CUIC section 1959. The vote passed unanimously, with Member Richardson abstaining.

Item No. 2: Appeals Board Policy 19

Chair Rice thanked Tim McArdle and Jehan Flagg for putting together the different versions of the Policy 19 to be considered.

Tim McArdle summarized the differences between each version. Version 1 is a redraft of the existing policy. Version 2 conforms to the AG Opinion published in 1980 which states the Board may delegate authority over the field only to the Executive Director, and the Executive Director and Chief ALJ are one in the same person. Version 3 has the Board delegating authority over all of the branches to the Executive Director/Chief ALJ. Version 4 has the Board delegating its appointing authority first to the Chair, with the Chair then delegating that authority to the Executive Director/Chief ALJ for the Field Operations and the Support Branches, subject to the Chair's final authority to approve or deny hiring decisions made by the Chief.

Member Aguiar asked if there was a difference in the versions relative to the issue of terminating the Executive Director. Tim McArdle responded that he did not address that issue. Member Aguiar stated that Version 1 requires a majority plus one vote, which is absent in the other three versions. Jehan Flagg responded that was correct and the subsequent versions had been modified.

There entailed a discussion about the differences between each version, with the Board ultimately asking for additional clarification about the alternatives. Discussion then continued as follows.

Member Carbaugh questioned how much weight should be given to the AG Opinion. Chief Counsel Hilton stated that it is an opinion and not a binding court decision. He stated, however, that he does not see any reason to disagree with the opinion.

Member Carbaugh asked Chief Counsel Hilton for his recommendation.

Chief Counsel Hilton replied it is a policy matter for the Board. If the Board chooses not to delegate to the Executive Director authority over the Field, then that means the Board itself would have to make the decision on each appointment and firing. It would be difficult to conduct the operations of the Agency on such a basis. Chair Rice agreed it would be very cumbersome.

Member Aguiar suggested that possibly the reason it is taking long to get to a focus is that there seems to be a lack of a lead. Member Aguiar requested that a lead be appointed, and when the Board gets the report for the next meeting that it be a complete report, analysis, side by side comparison with a recommendation.

Chair Rice agreed and asked Tim McArdle to be that lead person and work in concert with Special Assistant Flagg, Chief Counsel Hilton and Member Richardson.

Member Montañez stated that there appears to be a consensus on some of the issues, and that the Board should focus on one or two points which can be honed for deliberation.

Chair Rice agreed, and stated it appeared everyone is in agreement to eliminate the majority plus one requirement, and further that delegation to the Chair over the Field cannot realistically be considered.

Chief Counsel Hilton stated that leaves the Board with the choice to either delegate at least that much authority to the Executive Director, or to retain that authority to the Board itself. Chair Rice commented that he would at least like to see advance notice of such actions taken by the Executive Director.

Executive Director Arcellana gave some history to the current practice, stating that because of budget implications everything was run by the Executive Director in order to maintain some consistency between the branches. He stated that every hiring decision is currently discussed with the Chair, this has been working well, and suggested that there be a limited delegation so that the Chair would retain part of that process.

Member Carbaugh stated that it is important to institutionalize a Chair's engagement so that the position is not written for just one Chair's preferences. Member Carbaugh requested that an organization chart be provided to the Board before they make their final decision. Member Figueroa agreed, stating she would like to see language that speaks not to the person but to the path of responsibility. She stated she is somewhat concerned about a later Chair who would rather delegate.

Nick Dressler of IT requested that the approval process be expedited to prevent the loss of prospective hires to other agencies. Chair Rice commented that they are sensitive to that issue and know that the Agency is in danger of losing people if they are not approved immediately.

Chief Counsel Hilton stated that he believes he understands the direction of the Board on this issue, and should be able to come up with just one or two versions of Policy 19 for the Board to consider.

Chair Rice requested that the complete Policy 19 analysis be provided to the Board within the next week or two for their review.

#### Item No. 3: Staff loans to EDD/Appeals Assistance

Chair Rice stated that this issue came up in connection with the problem of transmitting appeals from EDD to CUIAB in a timely manner. Possibly CUIAB could loan staff to EDD during these times of high workload to process nothing but Board appeals.

Executive Director Arcellana responded that there is some precedent for this, when CUIAB was not able to secure hearing facilities as quickly as possible. CUIAB hired staff on a limited term basis, who were then assigned to the Department of Real Estate Design to expedite the process.

Member Figueroa expressed concern about possible labor contract issues. Chair Rice stated he was not sure, but that this idea would be explored further.

#### 10. Public Comment:

William Wiseman from the law firm of Littler Mendelson, stated that he just wanted to thank the Board for listening to his prior comments and suggestions for



improving the hearing process, and in particular for the online-decisions project, which will make it much easier for parties to prepare for their cases.

He also stated a concern he has with the proposal to loan CUIAB staff to EDD, in that it could create a perception among the employment community of a lack of true independence of the two agencies. The CUIAB must maintain its status as an independent body created for the purpose of fairly adjudicating decisions made by EDD.

**11. Closed Session:**

The Board went into closed session. No votes were reported.

**Adjournment**

# FIELD OPERATIONS

		<u>FEBRUARY 2008</u>	<u>MARCH 2008</u>
<b><u>WORKLOAD</u></b>			
<b>Registrations</b>			
	UI TL	20,982	25,443
	DI	1,470	1,661
	Ruling & T-R	314	332
	Tax	277	202
	Other	50	64
	Total	23,093	27,702
<b>Dispositions</b>			
	UI TL	22,903	29,555
	DI	1,477	1,506
	Ruling & T-R	349	159
	Tax	147	117
	Other	63	40
	Total	24,939	31,377
<b>Balance - Open Cases</b>			
	UI TL	40,635	36,471
	DI	2,586	2,738
	Ruling & T-R	2,698	2,870
	Tax	2,869	2,953
	Other	63	87
	Total	48,851	45,119
<b><u>CASE AGE</u></b>			
Average Days	UI (mean)	43	35
Average Days	UI (median)	38	32
>90 Days Old	UI	7%	2%
>90 Days Old	w/out Multis	7%	2%
>90 Days Old	DI	15%	12%